

## MEMORANDUM

**TO:** Judge Hinojosa, Chair  
Tim McGrath, Staff Director

**FROM:** Linda Drazga Maxfield  
Office of Policy Analysis

**DATE:** March 22, 2005

**SUBJECT:** Data extract on March 15: Numbers on Post-Booker Sentencings

Attached is a table with a look at post-Booker cases received, coded, and edited as part of the Commission's post-Booker project. The numbers are prepared using data extracted at close-of-business on March 15, 2005.

- 62.1 percent are within the guideline range. (This compares to 65.0% in FY02.)
- 1.9 percent are above-range sentences. (This compares to 0.8% in FY02.)
  - Comprising the 1.9 percent of sentences above the guideline range is 0.9 percent classified as an upward departure from the guideline range. The other 1.0 percent of all cases either cite no reason, or cite US v Booker or 18 USC § 3553 as a reason, for the sentence above the guideline range.
- 22.3 percent are government-sponsored below-range sentences
  - The largest proportion (nearly 75 percent of this category) are due to §5K1.1 substantial assistance departure sentences.
- 13.7 percent are other below-range sentences
  - The 13.7 percent is comprised of 5.1 percent classified as a “downward departure” from the guideline range. The remaining 8.6 percent either cite no reason, or cite US v Booker or 18 USC § 3553 as a reason, for the below-range sentence.

## Comparison of Sentence Imposed and Position Relative to the Guideline Range

Cases Sentenced After US v Booker with Data Available to USSC on March 15, 2005

	N	%
<b>TOTAL<sup>1</sup></b>	<b>5,202</b>	<b>100.0</b>
<b>WITHIN GUIDELINE RANGE</b>	<b>3,230</b>	<b>62.1</b>
<b>ABOVE GUIDELINE RANGE</b>	<b>100</b>	<b>1.9</b>
“Upward departure” from the guideline range	49	0.9
Otherwise above the guideline range <sup>2</sup>	51	1.0
<b>GOVERNMENT-SPONSORED BELOW RANGE</b>	<b>1,160</b>	<b>22.3</b>
§5K1.1 Substantial Assistance departure	854	16.4
§5K3.1 EDP/Fast-Track departure	221	4.2
Departure pursuant to a plea agreement	85	1.6
<b>OTHER BELOW RANGE</b>	<b>712</b>	<b>13.7</b>
“Downward departure” from guideline range	263	5.1
Otherwise below the guideline range <sup>3</sup>	449	8.6

<sup>1</sup>This table reflects the 5,362 cases sentenced on or after January 12, 2005, with court documentation cumulatively received, coded and edited at the U.S. Sentencing Commission by March 15, 2004. Of this total, there are 160 cases excluded for two general reasons. Some excluded cases involve misdemeanor or other offenses which do not reference a sentencing guideline. Other excluded cases have information missing from the submitted documents that prevents the comparison of the sentence and the guideline range. As these documents are received, these cases will be updated.

<sup>2</sup>All cases explicitly citing either US v Booker or 18 USC § 3553 as a reason for a sentence above the guideline range are classified into this category. This category also includes cases that do not provide a reason for the above-guideline sentence.

<sup>3</sup>All cases explicitly citing either US v Booker or 18 USC § 3553 as a reason for a sentence below the guideline range are classified into this category. This category also includes cases that do not provide a reason for the below-guideline sentence.

SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extraction on March 15, 2005; prepared on March 21, 2005). Numbers may not sum to 100 percent due to rounding.

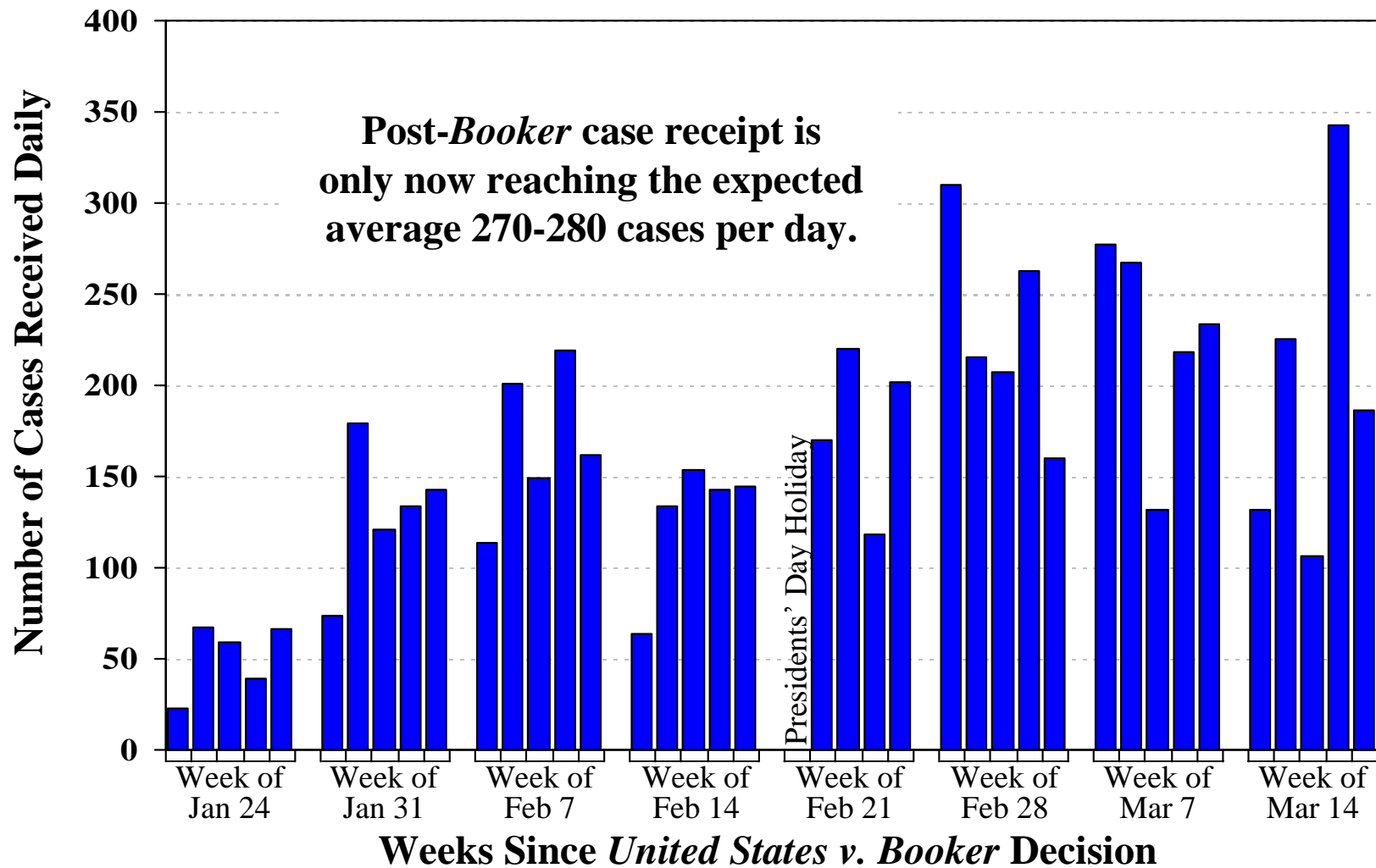
# Sentencing in the Initial Aftermath of *United States v. Booker*

Presentation Prepared for the  
U.S. Sentencing Commissioners  
March 22, 2004



# **Receipt of Cases and Documentation**

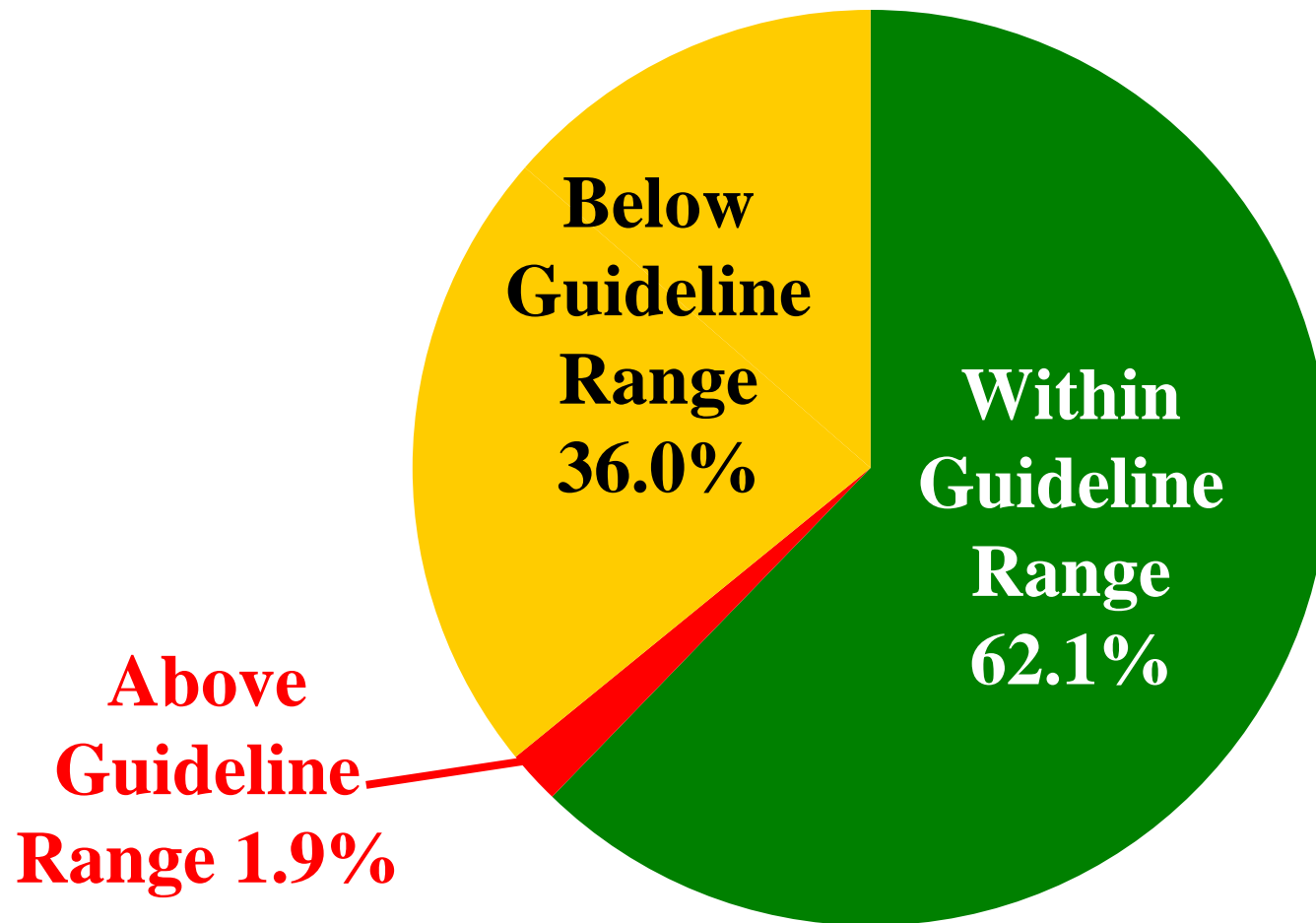
## USSC Receipt of Cases Sentenced After *United States v. Booker* Decision



SOURCE: U.S. Sentencing Commission, ORACLE data file, extracted March 21, 2005.

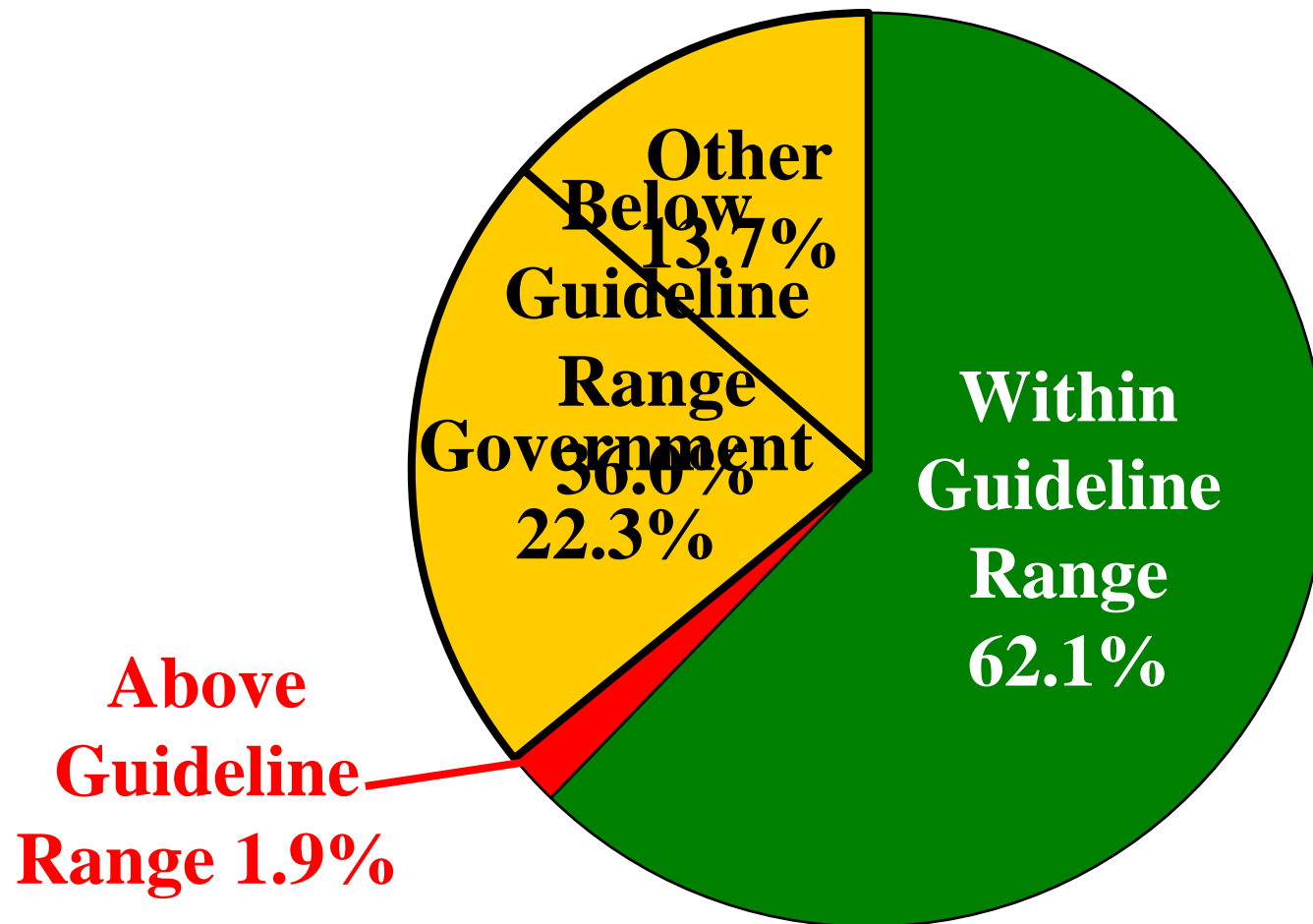
# **Position of Sentences in Relation to Guideline Range**

**Position of Sentences in Relation to Guideline Range**  
**After *United States v. Booker* Decision**



SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extraction on March 15, 2005; prepared March 21, 2005).

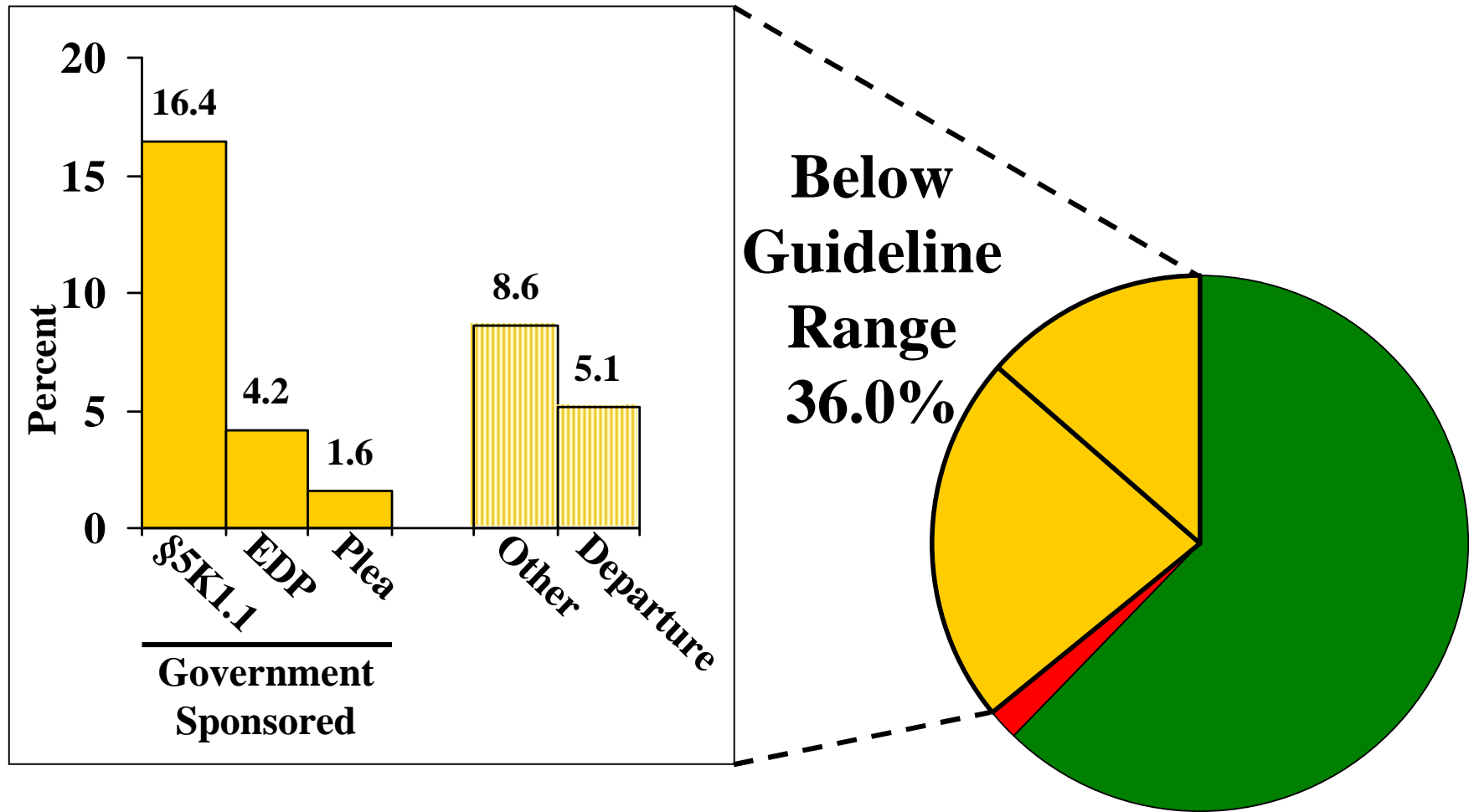
**Position of Sentences in Relation to Guideline Range**  
**After *United States v. Booker* Decision**



SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extraction on March 15, 2005; prepared March 21, 2005).



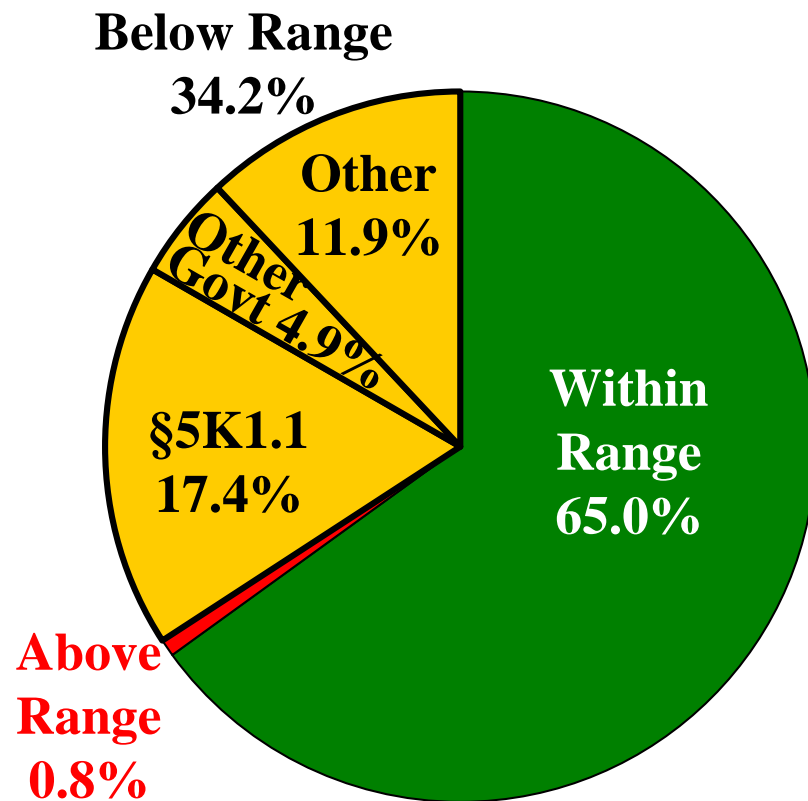
## Distribution of Cases Below the Guideline Range After *United States v. Booker* Decision



SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extraction on March 15, 2005; prepared on March 21, 2005).

## Position of Sentences in Relation to Guideline Range

### Fiscal Year 2002



### Post-Booker (as of 3/15/05)

